

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

JACOB L.,

Claimant,

and

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2005030217

DECISION

Stephen E. Hjelt, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on August 16, 2006.

Vince Toms, Senior Consumer Services Representative, appeared for the Inland Regional Center (IRC).

Marybel L., claimant's mother and Jose L., claimant's father, represented claimant at the hearing. Claimant was present.

The matter was submitted on August 16, 2006.

ISSUE

Does Jacob L. have a developmental disability that qualifies him for regional center services under the Lanterman Act?

FACTUAL FINDINGS

Background

1. Claimant, born December 29, 2001, is a four year nine-month-old boy from a loving and devoted family who seeks answers to his obvious challenges and help in finding treatment interventions that will benefit him. He has been evaluated on numerous occasions in different settings and has had differing diagnoses attached to his condition. The parents believe that he is autistic and therefore qualifies for regional center services. IRC asserts that there is strong evidence to the contrary. IRC claims that he is not autistic, but rather suffers from a language disorder and therefore does not qualify for regional center services.

2. This case is about eligibility for services under the Lanterman Act. Some eligibility cases are clear-cut, black and white, one way or another. Others, like this one, have a significant degree of grey to them. Perhaps the best way to capture the essence of this difficult issue is to reference the testimony of Gina Neikirk, Ph.D., who evaluated Jacob on behalf of the regional center. She testified that Jacob exhibited some of the characteristics of autism but not enough to qualify for regional center services. For the reasons expressed below, this represents the most accurate characterization of the evidence presented.

3. Jacob's parents are perplexed. They cannot understand why Jacob fails to qualify for regional center services as autistic since he has already been found qualified to receive special education (SE) services through the school district on the basis of autism. Jacob's parents are entitled to be perplexed. However, the standard by which autism is determined in Special Education cases is quite different from the standard used in Lanterman Act cases.

Medical Evidence

4. On November 9, 2004, Jacob was seen for a neurology consultation at Loma Linda University Health Center by Stanford Shu, M.D. He authored a report, exhibit 18 in evidence, that contained the following pertinent findings.

In the "History of Present Illness", he wrote:

"At this time, Jacob is 2 years 10 months of age, and he has evidence of language delay. The patient is unable to say any specific words that the mother can recognize, although he certainly babbles and makes sounds as he gestures towards objects. He tends to play by himself with little social interaction with others. He is not affectionate, according to the mother. The patient does not understand how toys and different items work. The patient recently had an audiology screening test, which was unremarkable."

In the "Physical Examination", he wrote:

“The child shows evidence of significant developmental delay, and he is functioning at a 10-12 month old range on examination. He has tendencies for autistic behavior with self-stimulatory behavior and poor sense of personal space. . . Hearing seems to be grossly intact, although the patient is not cooperative with formal testing.”

In the “Impression,” he wrote:

“Autistic spectrum disorder. The child has evidence of autism based on expressive language delay, motor delay, poor social interaction and global developmental delay. Of significance, the child has a cousin on the mother’s side who also has autism. I discussed with the patient’s mother and father for more than 45 minutes the diagnosis of autism, as well as the etiology and long-term prognosis of autism.”

5. On December 6, 2004, a Multidisciplinary Team of the Coachella Valley Unified School District met to assess Jacob. He had been referred for an evaluation by his parents due to the pediatrician’s diagnosis of Autism Spectrum Disorder. He was just about to turn three years old when he was evaluated. On the basis of the testing and evaluation, Jacob was found to meet the state eligibility requirement to qualify for special education services under the handicapping conditions of autism and language impairment. The “Summary” of their report, exhibit 22 in evidence reads:

“Jacob is an active 2 year old Hispanic male. He fell well below the average range in adaptive behavior skills on the Vineland. Jacob fell over 2 standard deviations below the mean in all areas on the Vineland. On the Mullen, Jacob is able to nest 3 cups, complete 2 forms in an insert puzzle, stack blocks, and scribble. He is unable to match objects, copy lines or circles, or screw/unscrew a nut and bolt. In visual-motor integration skills Jacob fell well below the average range on the VMI. Again he was unable to copy a line or circle, but could scribble. Jacob fell within the mildly to moderately autistic range on the CARS. Jacob does not interact with peers, engages in repetitive behaviors, and does not communicate verbally with others. He meets state eligibility criteria for special education services at this time under the handicapping condition of autism.”

6. Jacob was referred to IRC for further evaluation by Dr. Shu of Loma Linda as a result of his exam and findings of November 2004. Jacob was seen by Thomas Gross, Ph.D., on February 10, 2005. He performed a thorough and comprehensive evaluation. He wrote a report, exhibit 19 in evidence, following his evaluation. Pertinent findings are as follows:

In “History and Background,” he wrote:

“Early motor development was mildly delayed. Jacob sat alone at eight months, crawled at 12 months, and walked at 15 months of age. Speech and language

development is delayed. He is just beginning to form understandable words. Jacob is currently participating in a special education preschool at John Kelley School. He is currently participating in a mixed placement with mentally retarded and autistic children. Within his IEP he receives speech/language therapy/communication training and Adaptive Physical Education.”

In “Test Behavior,” he wrote:

“Jacob was evaluated with his parents. He was cooperative and participated on all aspects of the assessment. He made eye contact with a nice social smile. He frequently engaged his parents and my attention using eye contact and vocalization, then directing our attention with a specific pointing response. Reliable instances of joint attention and frequent social referencing were noted.

No odd, repetitive, or stereotyped behavior was seen. During a free-play observation, Jacob explored a variety of toys and objects, often calling our attention to them.

Jacob made vocalizations to get and direct attention. Some vocalizations were identifiable phrases, e.g., ‘good bye’ as he left the office (and while looking at me and smiling). He was quite persistent in using a pointing response to direct other to things of interest. Jacob responded to his name. He did not, however, follow verbal commands or directions.”

Dr. Gross administered multiple tests. These were:

A. Vineland Adaptive Behavior Scale. This test analyzes a person’s adaptive skills on four different domains. The observational data was supplied by Jacob’s parents. His findings on the four domains are as follows:

“Communication – Jacob will point to what he wants or pull others to what he wants. He has good and purposeful, directed pointing. He will attempt to use single words and two-word phrases, but his speech is misarticulated and difficult to understand. Some words, e.g., “good bye,” are intelligible. Jacob doesn’t follow object-action directions or commands with consistency. He doesn’t always respond to his name.

Daily Living Skills – Jacob doesn’t advise when he is wet or soiled. He will attempt to wash and dry his hands. He is assisted when brushing his teeth. He is bathed by others. Jacob is undressed and dressed by others. He could take off his socks. He doesn’t secure or undo fasteners. Jacob finger feeds. He has bad eating habits; he is very picky. He uses a straw. He can drink from an open cup without spillage. He doesn’t get himself a simple uncooked snack.

Jacob doesn't help with any chores. He doesn't understand the concept of money. He shows no awareness of dangerous situations in the home. In public places he will wander off.

Socialization – Jacob regards his parents and other family members as significant others. He seeks their attention and regard. He will initiate and sustain playful physical activity with his cousins. Otherwise, he doesn't show much interest in playing with peers.

Motor – Jacob walks independently. He is clumsy when running (i.e., he tends to be a bit floppy). He doesn't walk but will crawl up and down stairs. He does jump on two legs. Jacob uses a transitional grip. He has difficulty manipulating and placing small parts. He will scribble spontaneously.”

B. Leiter International Performance Scale. This is a non-verbal test of cognitive ability. The IQ score is referenced to a distribution of scores with a mean of 100 and a standard deviation of 16. Thus, scores below 68 are significantly below average. Jacob scored an 86.

C. Stanford Binet Intelligence Scale 4th Edition – Jacob was able to give scorable responses to items on four of the eight subtests. The subtest scores are referenced to distributions with means of 50 and standard deviations of 8, i.e., scores below 34 are significantly below average. On the subtests, Jacob's performance was in the average range.

D. Childhood Autism Rating Scale (CARS) – This is a 15 item behavior rating scale that was developed to identify children with autism and to distinguish them from developmentally handicapped children without the autism spectrum. Jacob's parents supplied the observational data. Scores above 29.5 are indicative of autism. Jacob score was 24.5. Dr. Gross wrote, in pertinent part:

“Jacob is an affectionate child. He will show and accept affection from close family members. He will make eye contact, although he doesn't sustain it. When eye contact is made it is socially meaningful and accompanied by a smile. He engaged in frequent and reliable joint attention and social referencing. There are moments when he gets bothered, when there are a lot of people and commotion and will, at these times, hide under a chair or isolate himself. He likes to be with others but doesn't interact with them. He will play with two cousins when they visit the house. These are favorite playmates. He will enter into chase/pursuit activities with these children. He tends to stay to himself at a church school and doesn't watch or show much interest in their activity. He will imitate other children's behaviors. He will imitate waving and playground activity he sees. Jacob seems aware of others' facial expressions of emotion. He will approach and hug a parent if he “thinks” he is in trouble. No odd expression of affect is noted. He is reported to laugh and appreciate physical humor. Jacob doesn't engage in hand regard or finger stimulation. He will occasionally lie on the floor and pose his hands in his lap. No hand flapping is noted.

He will twirl himself a bit, but in play with another child. No rocking is noted. Jacob plays with toys. He enjoys play dough. He doesn't show imaginative play. He used to align his cars, although this hasn't been seen lately. He likes his parents to play alongside him. He will spin small objects, e.g., wheels.

Jacob appears to have a normal pain response and seeks help when hurt. He is not hypersensitive to sounds. He exhibits an odd interest in odors. He isn't bothered by light. He is a picky eater and shows little interest in eating. He shows no tactile hypersensitivity.

Jacob doesn't insist on a routine. He accepts change. Changes in his physical surroundings don't bother him.

Jacob will attempt to use some misarticulated single words and phrases. He is very difficult to understand. He is specific and purposeful in using gesture to direct attention and relates an idea. No repetition of sounds is noted. No echolalia is noted. Jacob is often unresponsive to language directed to him."

In "Conclusions and Recommendations," Dr. Gross summarized the findings and his interpretations as follows:

"Jacob . . . does not qualify for Inland Regional Center services on the basis of autism, mental retardation, or a condition similar to mental retardation that would require treatment similar to that required by a mentally retarded person. His performance on this occasion shows him to have average nonverbal intellectual ability.

It is my opinion, based upon observation and parental report, that Jacob does not experience autism. Throughout the evaluation period and observation, he was quite sociable, e.g., seeking attention, directing attention, engaging in joint attention, social referencing, and at times, showing self-consciousness (e.g., putting on a hat, looking in the direction of an adult, noting the adult's regard, smiling, touching his hat, and turning away). Although he will occasionally manipulate small object parts, I didn't see, nor do his parents report any self-stimulation. Although he is delayed in communication skills, he is nonetheless purposeful in using gesture and vocalization to direct attention and relates simple ideas.

By report, Jacob is currently participating in a special education, preschool placement at John Kelley School. It appears he is in a classroom with children of mixed, albeit severe, disabilities, e.g., mental retardation and full-syndrome autism. Given that Jacob appears to have average nonverbal intelligence and does not experience autism, thought might be given to reconsidering his placement. Thought might, for example, be given to placing him in a preschool classroom for children with primarily communication delays."

7. On June 13, 2005, Jacob was further assessed and evaluated at Inland Regional Center to determine eligibility for regional center services. The assessment/evaluation was done jointly by Gina Neikirk, Ph.D., Staff Psychologist and Eliana Lois, M.D., Chief of Medical Services. They prepared and countersigned a report, exhibit 20 in evidence. Prior tests and evaluations were considered and additional tests were performed. Neikirk and Lois performed the Autism Diagnostic Observation Schedule (ADOS). The cut-off score for autism is 12. The cut-off score for Autism Spectrum/PDD/NOS is 7. Jacob scored 2 which is inconsistent with a diagnosis of autism. In the "Summary" they concluded in pertinent part:

"Jacob is a delightful child. He has the benefit of having loving parents who are interested in learning ways to facilitate his development. The results of previous as well as the current testing suggest that there is a significant discrepancy between his nonverbal and verbal skills. His nonverbal skills are estimated to fall within the low average to average range and his verbal skills fall within the borderline range. This is consistent with the diagnosis of Mixed Receptive-Expressive Language Disorder. It is assumed that his impaired ability to communicate significantly affects his interactions with peers. Jacob does, however, demonstrate attempts to seek attention and appears to enjoy interacting with adults. His observed level of nonverbal communication and social referencing/interaction is inconsistent with a DSM-IV-TR diagnosis of Autistic Disorder. It is recommended that he continue to participate in appropriate special education preschool services. An increase in the amount of speech and language intervention should be considered given the severity of his language impairment and ability to learn basic signs. It is anticipated that with an improved ability to communicate and more exposure to peers at preschool that his interactive play skills will improve. His communication and social interaction with peers should be monitored over time. If he continues to demonstrate impairments in these areas or if his cognitive skills do not continue to develop as expected, Jacob's family is encouraged to submit to the Regional Center educational and medical evaluations or letters from professionals which document a substantial impairment."

The "Diagnostic Impression" formed by Neikirk and Lois was Mixed Receptive-Expressive Language Disorder. This is identified in the DSM-IV-TR as 315.32.

8. On July 21, 2005, Jacob was evaluated at Children's Hospital and Health Center in San Diego by James Wilkes, Ph.D. The purpose of the evaluation was to assess his current overall developmental functioning and provide appropriate recommendations for intervention. He noted that the parents expressed concern that Jacob had been showing some signs of possible autistic disorder. He performed a variety of tests. He authored a report, exhibit 21 in evidence. In his "Evaluation" he made the following pertinent observations:

"Jacob has significant difficulties with communication. Most of his speech consists of fairly concrete language involving repeating words that he has heard, or in much more rare cases, using a word spontaneously. He is currently saying only about 8 to 10 words without prompting. He is also using a few signs to convey his needs

and wants. His verbal comprehension appears to be slightly more well developed. For example, he can identify some objects according to their use. He points, for example, to the object that you “take a bath in” and is able to point to a hamburger when prompted, “which one can you eat?” Much of his speech continues to consist of jargon. He also appears to be having significant speech articulation difficulties resulting in significant difficulties for the listener in understanding the words that Jacob is attempting to say . . . Jacob receives a performance IQ of 76, which falls within the borderline range and at the 5th percentile rank for his age. The performance IQ is considered to be a general measure of visual learning. . . . Results of the Vineland Adaptive Behavior Scales . . . reflect skills across most adaptive areas within the mild to moderate deficit range. In the area of communication, he is saying “mama” and “papa” appropriately, and is just beginning to say his brother’s name. He uses gestural communication such as pointing to convey his wants, and also shakes his head “no.” In the area of daily living skills, Jacob feeds himself with a spoon or fork, but continues to spill a fair amount when using a spoon. He is not yet successful in assisting with undressing or dressing skills. He is also not yet having success with the toilet or potty chair, and is not indicating a wet or soiled diaper. He also exhibits motor deficits. In fine motor areas, he is not yet screwing or unscrewing the lid of a jar. . . . On the basis of review of Jacob’s history, observation during structured and unstructured situations, and both parent and examiner completion of objective measures, Jacob does not currently meet full criteria for autistic disorder, but does meet criteria for the less severe diagnosis of pervasive developmental disorder, not otherwise specified. . . . Despite his developmental deficits and current indications of pervasive developmental disorder, Jacob demonstrates many strengths. During the assessment today, during play-based assessment, he shows a good interest in a variety of pretend play activities. He enjoys play with small human figures, brief play with cooking utensils, and play with tools. He is often willing to imitate simple motor activities such as jumping with a frog, pretending to drink from a cup, or pretending to smell a flower. He demonstrates shared enjoyment such as looking at the examiner or his parents and laughing while chasing bubbles or while playing with a balloon. His primary mood is happy and he appears to be a sweet boy who enjoys the company of familiar people. His parents also note his excellent memory skills. . . . The parents have been very pleased with his recent increase in socialization. They are highly motivated to provide Jacob with all interventions necessary to optimize his developmental outcome.”

Dr. Wilkes’ “Diagnostic Impression” was:

- “1. Current overall intellectual function with the borderline range.
2. Significant relative deficits in profile in expressive language skills
3. Mild to moderate deficits in adaptive skills.
4. Current indications pervasive developmental disorder, not otherwise specified.”

9. It was undisputed that Claimant had significant disabilities, but there was wide divergence on his diagnosis.

10. The administrative court had the benefit of the testimony of three experts. Dr. Gross, Dr. Lois and Dr. Neikerk all testified that Claimant was not developmentally disabled (as defined by the Lanterman Act), and that he did not qualify for regional center services. All were well-qualified and they gave a comprehensive and persuasive explanation why Claimant was not autistic. Their conclusions were supported and corroborated by a competent and thorough report completed by Dr. Wilkes at Children's Hospital in San Diego. Although there is evidence in the record to support a finding that claimant is autistic, it is far less persuasive than the evidence to the contrary. One of the great challenges in accurately diagnosing a young child such as claimant is the definitional overlap in the various DSM categories. What the categories try to capture is a description of a cluster of behaviors. Unfortunately, many behaviors are linked to more than one diagnostic criteria. Furthermore, the younger a child is the more difficult it is to adequately test. As a child ages, there is a greater opportunity to yield test results that are more definitive. Although there are opinions expressed early on that claimant was autistic, these opinions were not as well substantiated by detailed evaluations that included a broad spectrum of testing. As a result, Claimant's evidence was not sufficient to demonstrate, by a preponderance of evidence, that he has a qualifying developmental disability.

11. The opinion of Dr. Gross, Dr. Neikirk and Dr. Lois – that Claimant did not qualify for regional center services – was corroborated by Dr. Wilkes' report. Although Dr. Wilkes did not testify, his report gave a detailed list of tests he completed and the results of those tests. The report thoroughly described the background information Dr. Wilkes considered. Therefore, the report was reliable, corroborating evidence that Claimant is not autistic.

Mental Retardation or a Disabling Condition Similar to Retardation

12. The issue to be determined in this case was whether claimant qualified for regional center services due to autism. No finding is made whether claimant might qualify as either mentally retarded or under the so-called fifth category. That being said, there is no implied suggestion that claimant may or may not qualify under either of those standards. Nor is there, in this decision, a definitive statement that claimant is not autistic. The most accurate description of the state of the evidence regarding claimant comes indirectly from the "Summary" by Drs. Neikirk and Lois contained in exhibit 20. They state:

"His communication and social interaction with peers should be monitored over time. If he continues to demonstrate impairments in these areas or if his cognitive skills do not continue to develop as expected, Jacob's family is encouraged to submit to the Regional Center educational and medical evaluations or letters from professionals which document a substantial impairment."

At this point, Jacob exhibits some of the signs that are associated with autism. However, the totality of the behaviors he has, along with his developmental history, point more in the direction of the diagnosis by Neikirk and Lois of Mixed Receptive-Expressive Language Disorder or Wilkes- Pervasive Developmental Disorder, NOS rather than autism. This may well change over time as claimant grows and responds to the interventions he is currently receiving.

13. Claimant has qualified for Special Education services. The standard by which one establishes qualification for SE services due to autism is much less rigorous than the standard to qualify for regional center services due to autism. In Special Education, one need only establish that one has an “autistic-like condition.” To qualify for eligibility under the Lanterman Act, one must establish that the DSM IV TR criteria for a diagnosis of autism are established. The DSM diagnostic criteria are substantially more stringent.

14. Title 5, California Code of Regulations, section 3030 (g) contains the criteria by which one qualifies for special education related to autism. It reads as follows:

“A pupil exhibits any combination of the following autistic-like behaviors, to include but not limited to:

- (1) An inability to use oral language for appropriate communication.
- (2) A history of extreme withdrawal or relating to people inappropriately and continued impairment in social interaction from infancy through early childhood.
- (3) An obsession to maintain sameness.
- (4) Extreme preoccupation with objects or inappropriate use of objects or both.
- (5) Extreme resistance to controls.
- (6) Displays peculiar motoric mannerisms and motility patterns.
- (7) Self-stimulating, ritualistic behavior.

15. To qualify for regional center services for autism, one must satisfy the relatively rigorous diagnostic criteria contained in the DSM IV TR. The Diagnostic Criteria in the DSM for 299.00 Autistic Disorder is as follows:

“A. A total of six (or more) items from (1), (2), and (3), with at least two from (1), and one each from (2) and (3).

(1) qualitative impairment in social interaction, as manifested by at least two of the following:

- (a) marked impairment in the use of multiple nonverbal behaviors such as eye-to-eye gaze, facial expression, body postures, and gestures to regulate social interaction.
- (b) failure to develop peer relationships appropriate to developmental level.

- (c) a lack of spontaneous seeking to share enjoyment, interests, or achievements with other people (e.g., by a lack of showing, bringing, or pointing out objects of interest).
- (d) lack of social or emotional reciprocity.

(2) qualitative impairments in communication as manifested by at least one of the following:

- (a) delay in, or total lack of, the development of spoken language (not accompanied by an attempt to compensate through alternative modes of communication such as gesture or mime).
- (b) in individuals with adequate speech, marked impairment in the ability to initiate or sustain a conversation with others.
- (c) stereotyped and repetitive use of language or idiosyncratic language.
- (d) lack of varied, spontaneous make-believe play or social imitative play appropriate to developmental level.

(3) restricted repetitive and stereotyped patterns of behavior, interests, and activities, as manifested by at least one of the following:

- (a) encompassing preoccupation with one or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus.
- (b) apparently inflexible adherence to specific nonfunctional routines or rituals.
- (c) stereotyped and repetitive motor mannerisms (e.g., hand or finger flapping or twisting, or complex whole-body movements).
- (d) Persistent preoccupation with parts of objects.

B. Delays or abnormal functioning in at least one of the following areas, with onset prior to age 3 years: (1) social interaction, (2) language as used in social communication, or (3) symbolic or imaginative play.

C. The disturbance is not better accounted for by Rhett's Disorder or Childhood Disintegrative Disorder."

16. Jacob was present for most of the hearing. Jacob was exhausting for his family to watch and attend to. There is no question that he has a substantial handicap and that his family needs help.

17. Jacob clearly qualifies for Special Education services under the standards of the California Code of Regulations as exhibiting at least one of the 7 "autistic-like behaviors." He does not qualify under the more rigorous standards of the DSM. Expert testimony established that Jacob meets only 3 of the 12 criteria in the DSM. A minimum of

six is required to satisfy the diagnostic criteria. He satisfies 1(b)-failure to develop peer relationships appropriate to developmental level, 2(a)-delay in, or total lack of, the development of spoken language (not accompanied by an attempt to compensate through alternative modes of communication such as gestures or mime) and 3(c)-stereotyped and repetitive motor mannerisms (e.g., hand or finger flapping, or twisting, or complex whole-body movements). Quite simply, Jacob exhibits some of the behaviors that are typically associated and consistent with autism. However, the totality of his behaviors and his scores and profiles on the various tests that have been administered to him are far more consistent with a diagnosis of Mixed Receptive-Expressive Language Disorder or Pervasive Developmental Disorder, Not Otherwise Specified.

LEGAL CONCLUSIONS

The Lanterman Act

1. The Lanterman Developmental Disabilities Services Act (Act) is contained in the Welfare and Institutions Code. (Welf. & Inst. Code, § 4500 et seq.) The purpose of the Act is to provide a “pattern of facilities and services . . . sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life.” (§ 4501; *Association of Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

Developmental Disability

2. Section 4512, subdivision (a) of the Act defines a developmental disability as follows:

“(a) ‘Developmental disability’ means a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature.”

3. Section 54000 of Title 17 of the California Code of Regulations further defines the term developmental disability:

“(a) ‘Developmental Disability’ means a disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation.

- (b) The Developmental Disability shall:
 - (1) Originate before age eighteen;
 - (2) Be likely to continue indefinitely;
 - (3) Constitute a substantial disability for the individual as defined in the article.
- (c) Developmental Disability shall not include handicapping conditions that are:
 - (1) Solely psychiatric disorders where there is impaired intellectual or social functioning which originated as a result of the psychiatric disorder or treatment given for such a disorder. Such psychiatric disorders include psycho-social deprivation and/or psychosis, severe neurosis or personality disorders even where social and intellectual functioning have become seriously impaired as an integral manifestation of the disorder.
 - (2) Solely learning disabilities. A learning disability is a condition which manifests as a significant discrepancy between estimated cognitive potential and actual level of educational performance and which is not a result of generalized mental retardation, educational or psycho-social deprivation, psychiatric disorder, or sensory loss.
 - (3) Solely physical in nature. These conditions include congenital anomalies or conditions acquired through disease, accident, or faulty development which are not associated with a neurological impairment that results in a need for treatment similar to that required for mental retardation.

Burden of Proof

4. In a proceeding to determine eligibility, the burden of proof is on the Claimant to establish he or she meets the proper criteria. The standard is a preponderance of the evidence. (Evid. Code, § 115.)

The Evidence Was Not Sufficient to Establish That Claimant Was Eligible for Regional Center Services

5. Claimant's major contention was that he qualified for regional center services under a diagnosis of autism. The evidence was not sufficient to support this contention. To the contrary, the evidence supporting the regional center's denial of eligibility was very persuasive.

6. No one test is diagnostic for autism. One must look at a variety of sources to determine whether the totality of factors considered satisfies the criteria in the DSM IV TR. Although we strive for objectivity in diagnosis, there remains a fair amount of subjectivity in applying the criteria of DSM IV TR 299.00. Based on the evidence presented in this case, it is more likely than not that claimant suffers, not from autism, but from some other condition. At this time, based upon the evidence, the two diagnoses that seem more consistent with his symptom profile are Mixed Expressive-Receptive Language Disorder or Pervasive Developmental Disorder, NOS.

7. These conclusions are based on all the factual findings and legal conclusions.

ORDER

The IRC's conclusion, that Claimant does not qualify for Regional Center services due to autism, is upheld. Claimant failed to meet his burden of proof that he is entitled to regional center services under the Lanterman Act.

NOTICE

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within ninety days.

DATED: _____

STEPHEN E. HJELT
Administrative Law Judge
Office of Administrative Hearings